

FILED

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL

DEC 09 2013

State Grand Jury Judge

State Grand Jury
Number SGJ646-13-4(2)
Superior Court
Docket Number 13-12-00224-5

STATE OF NEW JERSEY)	
v.)	INDICTMENT
FRANK G. CAPECE)	
and)	
KIRK C. NELSON)	

The Grand Jurors of and for the State of New Jersey, upon their oaths, present that:

COUNT ONE

(Conspiracy - Second Degree)

FRANK G. CAPECE

and

KIRK C. NELSON

who are named as defendants herein, and another person, whose identity is known to the Grand Jurors, who is a coconspirator but not named as defendant herein, between on or about August 1, 2011 and on or about December 22, 2011, at the City of Elizabeth, in the County of Union, elsewhere, and within the jurisdiction of this Court, with the purpose of promoting the crimes of official

misconduct, tampering with public records or information, tampering with or fabricating physical evidence, and hindering apprehension or prosecution, did agree that:

A. One or more of them would engage in conduct which would constitute the aforesaid crimes or an attempt or solicitation to commit such crimes; or

B. One or more of them would aid in the planning, attempt, solicitation or commission of said crimes, that is:

1. Official Misconduct, in that one or more of them, being a public servant, would, with the purpose to obtain one or more non-pecuniary benefit(s) for himself or another, knowingly commit an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act was unauthorized or was being committed in an unauthorized manner, contrary to the provisions of N.J.S.A. 2C:30-2a and N.J.S.A. 2C:2-6;

2. Tampering with Public Records or Information, in that one or more of them would purposely and unlawfully destroy, conceal, remove, mutilate or otherwise impair the verity or availability of any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government, that is, purposely and unlawfully conceal and remove a household application for Free and Reduced Price School Meals,

from the records of the Board of Education for the City of Elizabeth School District, with the purpose to defraud or injure anyone, contrary to the provisions of N.J.S.A. 2C:28-7a(3);

3. Tampering with or Fabricating Physical Evidence, in that one or more of them would, believing that an official proceeding or investigation was pending or about to be instituted, alter, destroy, conceal or remove any article, object, record, document or other thing of physical substance with purpose to impair its verity or availability in such proceeding or investigation, contrary to the provisions of N.J.S.A. 2C:28-6(1);

4. Hindering Apprehension or Prosecution, in that one or more of them would, with purpose to hinder the detention, apprehension, investigation, prosecution, conviction or punishment of another for an offense, suppress, by way of concealment or destruction, any evidence of the crime, or tamper with a witness, informant, document or other source of information, regardless of its admissibility in evidence, which might aid in the discovery or apprehension of such person or in lodging of a charge against him, contrary to the provisions of N.J.S.A. 2C:29-3a(3).

Among the means by which the aforesaid conspirators would carry out the conspiracy are the following:

It was part of the conspiracy that the said FRANK G. CAPECE,

an attorney at law of the State of New Jersey providing legal services to the Board of Education for the City of Elizabeth School District, and the said KIRK C. NELSON, a public servant, that is, an attorney at law of the State of New Jersey and the Board Attorney for the Board of Education for the City of Elizabeth School District, did direct an employee of the Board of Education for the City of Elizabeth School District, whose identity is known to the Grand Jurors, to remove a document from the records of the said Board, to wit, a household application for Free and Reduced Price School Meals, which the said FRANK G. CAPECE and the said KIRK C. NELSON knew was relevant to an ongoing investigation being conducted by the State of New Jersey, and, furthermore, did direct the said employee to alter an electronic computer entry in the Board's computer system related to the said household application.

It was further part of the conspiracy that the said FRANK G. CAPECE and the said KIRK C. NELSON did receive the said household application from the said employee of the Board.

It was further part of the conspiracy that the said FRANK G. CAPECE and the said KIRK C. NELSON did conceal the said household application.

All in violation of N.J.S.A. 2C:5-2, and against the peace of this State, the government and dignity of the same.

COUNT TWO

(Official Misconduct - Second Degree)

FRANK G. CAPECE

and

KIRK C. NELSON

between on or about August 1, 2011 and on or about December 22, 2011, at the City of Elizabeth, in the County of Union, elsewhere, and within the jurisdiction of this Court, the said KIRK C. NELSON being a public servant, that is, Board attorney for the Board of Education for the City of Elizabeth School District, having thereby the official functions and duties, among others, to accept service of legal process, including subpoenas duces tecum, on behalf of the Board of Education and to produce records and documents fully responsive to said subpoenas, to provide legal advice to Board of Education members and employees, to perform his duties in a legal and proper manner, to display good faith, honesty and integrity, and to be impervious to corrupting influences, and acting with a purpose to obtain a benefit for himself or another, did commit an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act was committed in an unauthorized manner, that is, the said KIRK C. NELSON and FRANK G. CAPECE did direct an employee of the Board of Education to remove a document, to wit, a household application for Free and Reduced

Price School Meals, from the records of the Board of Education after having accepted service of a State Grand Jury subpoena duces tecum on behalf of the Board of Education, knowing the document was responsive to the said subpoena, and concealed the document, preventing its production to the State Grand Jury, and, furthermore, did direct the said employee to alter an electronic computer entry in the Board's computer system related to the said household application, each with the purpose to secure a non-pecuniary benefit to himself or another, contrary to the provisions of N.J.S.A. 2C:30-2a and N.J.S.A. 2C:2-6, and against the peace of this State, the government and dignity of the same.

COUNT THREE

(Official Misconduct - Second Degree)

FRANK G. CAPECE

and

KIRK C. NELSON

between on or about August 1, 2011 and on or about December 22, 2011, at the City of Elizabeth, in the County of Union, elsewhere, and within the jurisdiction of this Court, did, with the purpose of promoting or facilitating the commission of the offense of official misconduct, solicit a public servant to commit, or did aid or agree or attempt to aid said public servant in planning or committing, an act relating to the said public servant's office but constituting an unauthorized exercise of the said public servant's official functions, knowing that such act was committed in an unauthorized manner, with the purpose of obtaining a benefit for themselves or another, that is, the said FRANK G. CAPECE and KIRK C. NELSON did aid or agree or attempt to aid a public servant, that is, a Member of the Board of Education for the City of Elizabeth School District, whose identity is known to the Grand Jurors, having thereby the official functions and duties, among others, to utilize the services of Board of Education employees in a legal, lawful and proper manner for the discharge of his official duties, to refrain from using or attempting to use his official position to secure unwarranted

privileges or advantages for himself, members of his immediate family or others, to perform his duties in a legal and proper manner, to display good faith, honesty and integrity, and to be impervious to corrupting influences, in using his official position to secure an unwarranted privilege or advantage for himself, members of his immediate family or others, by taking action on behalf of, and for the personal benefit of, the said public servant members of his immediate family or others, to wit, directing an employee of the Board of Education to remove a household application for Free and Reduced Price School Meals, filed on behalf of the family of the said public servant, from the records of the Board of Education, and, furthermore, directing the said employee to alter an electronic computer entry in the Board's computer system related to the said household application, each with the purpose to secure a non-pecuniary benefit to himself or another, contrary to the provisions of N.J.S.A. 2C:30-2a and N.J.S.A. 2C:2-6, and against the peace of this State, the government and dignity of the same.

COUNT FOUR

(Tampering with Public Records or Information - Third Degree)

FRANK G. CAPECE

and

KIRK C. NELSON

between on or about August 1, 2011 and on or about December 22, 2011, at the City of Elizabeth, in the County of Union, elsewhere, and within the jurisdiction of this Court, did purposely and unlawfully destroy, conceal, remove, mutilate or otherwise impair the verity or availability of any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government, that is, purposely and unlawfully conceal and remove a household application for Free and Reduced Price School Meals, from the records of the Board of Education for the City of Elizabeth School District, with the purpose to defraud or injure anyone, contrary to the provisions of N.J.S.A. 2C:28-7a(3) and N.J.S.A. 2C:2-6, and against the peace of this State, the government and dignity of the same.

COUNT FIVE

(Tampering with or Fabricating Physical Evidence - Fourth Degree)

FRANK G. CAPECE

and

KIRK C. NELSON

between on or about August 1, 2011 and on or about December 22, 2011, at the City of Elizabeth, in the County of Union, elsewhere, and within the jurisdiction of this Court, believing that an official proceeding or investigation was pending or about to be instituted, did alter, destroy, conceal or remove any article, object, record, document or other thing of physical substance with purpose to impair its verity or availability in such proceeding or investigation, that is, the said FRANK G. CAPECE and the said KIRK C. NELSON did, believing that an official investigation was pending or about to be instituted, conceal and remove a household application for Free and Reduced Price School Meals, from the records of the Board of Education for the City of Elizabeth School District with purpose to impair its availability in such proceeding or investigation, contrary to the provisions of N.J.S.A. 2C:28-6(1) and N.J.S.A. 2C:2-6, and against the peace of this State, the government and dignity of the same.

COUNT SIX

(Hindering Apprehension or Prosecution - Fourth Degree)

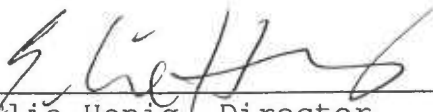
FRANK G. CAPECE

and

KIRK C. NELSON

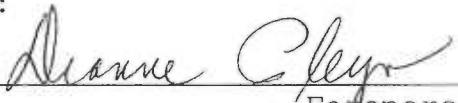
between on or about August 1, 2011 and on or about December 22, 2011, at the City of Elizabeth, in the County of Union, elsewhere, and within the jurisdiction of this Court, with purpose to hinder the detention, apprehension, investigation, prosecution, conviction or punishment of another for an offense, did suppress, by way of concealment or destruction, any evidence of the crime, or tamper with a witness, informant, document or other source of information, regardless of its admissibility in evidence, which might aid in the discovery or apprehension of such person or in lodging of a charge against such person, that is, the said FRANK G. CAPECE and the said KIRK C. NELSON, with the purpose to hinder the detention, apprehension, investigation, prosecution, conviction or punishment of another, whose identity is known to the Grand Jurors, for an offense, did suppress, by way of concealment or destruction, evidence of the crime, and did tamper with a document or other source of information, which might aid in the lodging of a charge against such person, contrary to the provisions of N.J.S.A. 2C:29-3a(3) and N.J.S.A. 2C:2-6, and against the peace of this State, the government and

dignity of the same.



Elie Honig, Director
Division of Criminal Justice

A TRUE BILL:



, Foreperson

Dated: 12/09/13

FILED

DEC 09 2013

State Grand Jury Judge

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - CRIMINAL

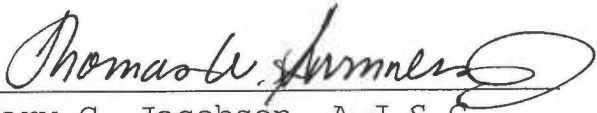
State Grand Jury
Number SGJ646-13-4(2)
Superior Court
Docket Number 13-12-00224-5

STATE OF NEW JERSEY)
 v.) ORDER OF VENUE
FRANK G. CAPECE)
 and)
KIRK C. NELSON)

An Indictment having been returned to this Court by the State Grand Jury in the above captioned matter,

IT IS ORDERED on this 9th day of December, 2013, pursuant to paragraph 8 of the State Grand Jury Act, that the County of Union be and hereby is designated as the County of venue for the purpose of trial.

IT IS FURTHER ORDERED that the Clerk of the Superior Court shall transmit forthwith the Indictment in this matter and a certified copy of this Order to the Criminal Division Manager of the County of Union for filing.


~~Mary C. Jacobsen, A.J.S.C.~~
Thomas W. Summers, Jr